Ajit Singh Vs Gurbax Singh and Others

Regular Second Appeal No. 2004 of 2001

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 21, 2004

Citation: (2005) 1 CivCC 574 : (2005) 140 PLR 777 : (2005) 1 RCR(Civil) 56

Hon'ble Judges: V.M. Jain, J

Bench: Single Bench

Advocate: B.R. Mahajan, for the Appellant; K.S. Rikhi, for the Respondent

Final Decision: Allowed

Judgement

V.M. Jain, J.
Records received.

2. This Regular Second Appeal has been filed by Ajit Singh plaintiff against the decrees of the Courts below, whereby the suit filed by him was

dismissed by the Trial Court and the appeal filed by him was also dismissed by the learned Additional District Judge.

3. Ajit Singh plaintiff had filed a suit for permanent injunction for restraining the defendant from interfering in the peaceful possession of the plaintiff

over the house in question except in due course of law. In the plaint, it was alleged by the plaintiff that Kundan Singh was the father of the plaintiff

and defendant Nos. 2 and 3 and grandfather of defendant No. 1 and that now he is dead. It was alleged that during his life time Kundan Singh had

executed a legal and valid Will, registered in the office of the Sub-Registrar, Amritsar dated 9.3.1978 and had given the property to his sons as per

the Will. It was alleged that the plaintiff was living with his mother Kartar Kaur peacefully since his childhood in the house in dispute. It was further

alleged that the marriage of the plaintiff was also celebrated in this house and the plaintiff had also made improvements in the house by constructing

room and even the electric bills in respect of the electric connection installed in the said house were in the name of the plaintiff and the ration card

of the plaintiff was also in respect of the said house. It was alleged that adjoining to the said house towards the east was the house of defendant

Nos. 1 and 2 being the house of Kundan Singh and there was a partition wall between the two houses and even the entries of both the houses

were separate. It was alleged that defendants were adamant and were giving threats to the plaintiff that he should give possession of the house to

them or he will be finished. It was alleged that as per the Will executed by Kundan Singh deceased, Smt. Kartar Kaur was to remain in this house

during her lifetime and thereafter this house will be the property of the plaintiff and no other person had any concern with this house. It was alleged

that defendants had nothing to do with this house but they were illegally threatening the plaintiff to vacate the said house even though they had no

right or connection with the said house. It was accordingly prayed that the defendants be restrained from interfering with the possession of the

plaintiff over the said house. The defendants appeared and filed the written statement alleging there that the plaintiff had no concern with the house

in question as he was neither the owner nor in possession thereof. It was admitted that Kundan Singh had executed a legal and valid Will dated

9.3.1978. It was alleged that the said Will was only in favour of Kartar Kaur, mother of the plaintiff and defendant Nos. 2 and 3. it was denied that

the plaintiff was living with his mother, Smt. Kartar Kaur in the house in dispute. On the other hand, it was alleged that in fact, the defendants were

living with Smt.Kartar Kaur in the said house and not the plaintiff since his childhood as alleged and in fact the plaintiff was not in possession

thereof. It was also denied that the marriage of the plaintiff was celebrated in this house or that the plaintiff had made any improvement in the said

house by constructing rooms. It was alleged that in fact, the plaintiff had no right, title or interest in the suit property. It was also denied that the

electric connection installed in this house was in the name of the plaintiff or that the ration card of the plaintiff was in respect of the said house. It

was also denied that there was any partition wall between two houses. On the other hand, it was pleaded that in fact, the property belongs to the

defendants, whereas the property in dispute belongs to Smt. Kartar Kaur, who was the owner in possession of the same by virtue of the registered

Will in her favour executed by Kundan Singh (now deceased). The plaintiff filed replication controverting the allegations contained in the written

statement and reiterated the stands taken up in the plaint.

4. On the pleadings of the parties, the learned Trial Court framed the following issues in this case on 31.10.1996:-

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP

2. Whether the suit is bad for misjoinder and non-joinder of necessary parties? OPD

3. Whether there is any cause of action to the plaintiff? OPP

4. Relief.

5. When the case was still at the stage of the plaintiffs evidence, no-one appeared on behalf of the defendants and as such the defendants were

proceeded against ex parte. Thereafter, the ex parte evidence of the plaintiff was recorded. After hearing the counsel for the plaintiff and perusing

the record, the learned Trial Court dismissed the suit of the plaintiff. The appeal filed by the plaintiff was also dismissed by the learned Additional

District Judge. Aggrieved against the same, the plaintiff filed the present Regular Second Appeal in this Court.

6. In this appeal, the learned counsel has put in appearance on behalf of the defendant-respondents. It is not disputed before me by the learned

counsel for the parties that Smt. Kartar Kaur had expired on 30.12.200 i.e. during the pendency of the appeal before the lower Appellate Court.

7. The learned counsel appearing for the plaintiff-appellant submitted before me that the Courts below had erred in law in dismissing the suit of the

plaintiff merely on the ground that the plaintiff was not found in exclusive possession of the suit property. It has been submitted that in fact, the

plaintiff alongwith his mother was in possession of the suit property and the defendant-respondents were not in possession thereof and as such the

plaintiff had a right to seek injunction against the defendants from interfering in his possession over the suit property and the Courts below had

erred in law in dismissing the suit of the plaintiff. On the other hand, the learned counsel appearing for the defendant-respondents submitted before

me that since this plaintiff was residing in the said house along with his mother, it could not be said that the plaintiff was in exclusive possession of

the suit property and as such the Court below had rightly refused to grant injunction in favour of the plaintiff.

8. After hearing the learned counsel for the parties and perusing the record, in my opinion, the following substantial question of law arises for

determination in this appeal :-

If the plaintiff alongwith his mother is found to be residing in the house in question,could the relief of injunction be refused to the plaintiff and

against the defendants merely on the ground that the plaintiff was not in exclusive possession of the suit property since he was residing therein

alongwith his mother.

9. After hearing the learned counsel for the parties and perusing the record, in my opinion, the afore-mentioned substantial question of law had to

be answered in favour of the plaintiff-appellant. As referred to above, after the framing of the issues and before the evidence could be examined,

the defendants had absented themselves from the Court and were proceeded against ex parte. Thereafter, the plaintiff had produced ex parte

evidence in support of his case. No evidence was led by the defendants to rebut the evidence led by the plaintiff. From the unrebutted testimony of

PW1 Tarlok Singh photographer, PW2 Naranjan Singh, PW3 Hari Chand Gupta draftsman and PW4 Ajit Singh plaintiff, in my opinion, it stands

established on the record that the plaintiff alongwith his mother was in exclusive possession of the house in question and that the defendants were

not in possession thereof. This is especially so when these witnesses were not cross-examined on behalf of the defendants, nor any evidence was

led by the defendants to rebut the evidence led by the plaintiff in this regard.

10. Once it is found that the plaintiff alongwith his mother was in exclusive possession of the house in question, in my opinion, no case was made

out for refusing to grant injunction in favour of the plaintiff and against the defendants, restraining the defendants from interfering in the peaceful

possession of the plaintiff over the house in question. This is especially so when it is admitted case of the parties that the mother of the plaintiff had

expired during the pendency of the appeal before the Additional District Judge and that being so the learned Additional District Judge could not

have held that the plaintiff was not in exclusive possession of the house in question, more so when the defendants had not led any evidence in

support of their plea.

11. Once it is found that the plaintiff alongwith his mother was in exclusive possession of the house in question, in my opinion, the plaintiff-appellant

was entitled to the grant of injunction restraining the defendants from interfering in his possession over the suit property. In my opinion, the courts

below have erred in law in holding that since the plaintiff was in exclusive possession of the said house along with his mother, he could not be said

to be in exclusive possession of the house in question and as such, the defendants could not be restrained from interfering in his possession. In my

opinion, the Courts below fell into an error by considering that the plaintiff was not in exclusive possession of the house in question, merely because

he was residing in the said house alongwith his mother. For refusing to grant the relief of injunction, under such circumstances, the Courts are

required to consider the status of the plaintiffs vis-a-vis the defendants. In the present case, nothing has come on the record to show that the

defendants were in possession of the house in question. On the other hand, the plaintiff is found to be in exclusive possession of the said house

alongwith his mother. That being so, in my opinion, the plaintiff was entitled to the injunction restraining the defendants from interfering in his

possession over the suit property.

12. In view of the above, the substantial question of law referred to above, is decided in favour of the plaintiff and it is held that under such

circumstances, the plaintiff is entitled to the grant of injunction in his favour and against the defendants.

For the reasons recorded above, the present appeal is allowed, the judgments and decrees of the Courts below are set aside and the suit of the

plaintiff is decreed and the defendants are restrained from interfering in the peaceful possession of the plaintiff over the suit property, except in due

course of law. No costs.